

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0639**

In re the Marriage of: Paul Jerome Wittrock, petitioner,  
Appellant,

vs.

Shelley Sue Wittrock,  
Respondent.

**Filed January 30, 2023  
Affirmed  
Reyes, Judge**

Benton County District Court  
File No. 05-FA-20-476

Kristi D. Stanislawski, Jovanovich, Dege & Athmann, P.A., St. Cloud, Minnesota (for  
appellant)

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Considered and decided by Slieter, Presiding Judge; Reyes, Judge; and Frisch,  
Judge.

**NONPRECEDENTIAL OPINION**

**REYES, Judge**

In this parenting-time dispute, father argues that the district court (1) erred by  
determining that he failed to rebut the presumption against sole legal custody and sole  
physical custody; (2) abused its discretion by awarding wife sole legal and sole physical

custody; and (3) abused its discretion by not maximizing parenting time for both parents. We affirm.

## **FACTS**

Appellant-father Paul Jerome Wittrock and respondent-mother Shelley Sue Wittrock were married in 2014 and share one minor child, born in February 2012. During their marriage, father became verbally and physically abusive towards mother. On February 1, 2020, father was charged with two counts of misdemeanor domestic assault against mother, and the district court issued a domestic abuse no-contact order (DANCO) against father. The charges were later dismissed. Following that incident, father petitioned for dissolution of marriage. Both parties cross-moved for temporary relief on custody and parenting-time issues.

The district court heard both motions and issued an order on September 01, 2020, awarding mother temporary sole legal and sole physical custody of child. The district court also awarded father parenting time. After the district court issued the temporary order, mother delivered father a note informing him that she intended to move to North Dakota with child for an employment opportunity and to be closer to family support. Later that month, mother moved to North Dakota with child.

Father moved for temporary relief seeking a return of child to Minnesota and modification of custody and parenting time. The district court denied father's motion but ordered that father's parenting time immediately resume and be unsupervised. During this time, the parties agreed to dissolve their marriage and allocate their assets and debts. The district court signed their stipulated judgment and decree which reserved parenting time

and custody issues for trial. After the stipulation, father moved to modify the parenting-time schedule again on June 2, 2021. The district court granted father's motion and ordered that for summer, father have two weeks on of parenting time and one week off with exchanges taking place on Sunday at 4:00 p.m.

At trial, the district court addressed permanent custody and parenting time. Father testified that he wanted to have child move back to Minnesota and reside primarily with him during the school year. Conversely, mother requested sole legal and sole physical custody of child and wanted the parenting time to remain the same. After trial, the district court issued a judgment and decree awarding mother sole legal and sole physical custody of child. It awarded father parenting time with child every other weekend from Friday at 6:00 p.m. through Sunday at 4:00 p.m., with child residing with mother during the week and every other weekend. This appeal follows.

## **DECISION**

**I. The district court did not clearly err by finding that domestic abuse occurred or err by determining that father did not rebut the presumption against joint legal and joint physical custody.**

Father argues that the district court erred as a matter of law by determining that he failed to rebut the presumption against sole legal and sole physical custody. Father's argument is misguided. "Because this issue requires an interpretation of law, our review is de novo." *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019).

A district court must consider two presumptions in joint-custody cases:

The court shall use a rebuttable presumption that upon request of either or both parties, joint legal custody is in the best interests of the child. However, *the court shall use a rebuttable*

*presumption that joint legal custody or joint physical custody is not in the best interests of the child if domestic abuse, as defined in section 518B.01,<sup>1</sup> has occurred between the parents. In determining whether the presumption is rebutted, the court shall consider the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs.*

Minn. Stat. § 518.17, subd. 1(b)(9) (2022) (emphasis added). The statute does not impose a presumption for or against a specific custodian, but only creates a rebuttable presumption against joint custody when domestic abuse has occurred. *Bosquez*, 933 N.W.2d at 791. Moreover, “[u]nless the presumption has been rebutted, the subdivision’s plain language expresses a preference for sole legal and physical custody.” *Id.* “The presumption focuses on the child’s needs and a custodial arrangement that is beneficial to the child, and not on particular caregivers.” *Id.*

Here, the district court did not determine that father failed to rebut the presumption against sole legal and sole physical custody. Instead, the district court engaged in a two-part analysis by (1) finding that domestic violence occurred and (2) then determining that father did not rebut the presumption against joint legal and joint physical custody. At trial, the district court heard testimony from both parties on the incident that led to father’s criminal charges of domestic assault. Father did not dispute that the incident occurred but minimized the incident and claimed that it was a mutual altercation. He also emphasized

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<sup>1</sup> Domestic abuse is defined in that section to mean the following acts, “if committed against a family or household member by a family or household member: (1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats . . . ; criminal sexual conduct . . . ; or interference with an emergency call.” Minn. Stat. § 518B.01, subd. 2(a) (2022).

that the charges were dismissed. Meanwhile, mother claimed that father physically and verbally abused her during their years together. She testified that on the day of the incident: “He reached out to me and - - well, almost put me through some double doors throwing me through, and then he came after me in the living room and grabbed my neck and threw me across the room.” Both parties agree that on the day of the incident, child was present in the house and once the parties began arguing, child’s brother took her downstairs. The district court also heard testimony from father’s sister about a fight between father and his stepson who was 18 years old at the time. The argument began over rent and escalated when stepson came at father. Father struck him and bloodied stepson’s head. The district court found mother’s testimony on domestic abuse more credible than father’s testimony and determined that domestic abuse occurred. We defer to the district court’s credibility determinations. *Anh Phuong Le v. Holter*, 838 N.W.2d 797, 802 (Minn. App. 2013), *rev. denied* (Minn. Dec. 31, 2013).

Based on this finding, the district court applied “a rebuttable presumption that joint legal custody and joint physical custody was not in the best interests of the child.” Minn. Stat. § 518.17, subd. 1(b)(9). The district court also considered whether that presumption had been rebutted through the testimony and evidence provided at trial. It heard testimony from mother that father violated the DANCO by driving past her house several times. Mother also testified that, because of father’s history of domestic abuse against her, she did not feel comfortable talking to father and did not believe that they could effectively communicate to co-parent child. Based on the testimony and evidence presented, we

conclude that the district court did not err by determining that father did not rebut the presumption against joint legal and physical custody.

**II. The district court did not abuse its discretion by awarding mother sole legal custody and sole physical custody.**

Father argues that the district court abused its discretion by determining that child's best-interests factors favored mother having sole legal and sole physical custody. We are not convinced. We review a district court's balancing of the best-interests factors for an abuse of discretion. *Bosquez*, 933 N.W.2d at 794. "An abuse of discretion occurs when the district court resolves the matter in a manner that is against logic and the facts on [the] record." *O'Donnell v. O'Donnell*, 678 N.W.2d 471, 474 (Minn. App. 2004) (quoting *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984)). Moreover, a "district court's observations of the parties' demeanor, sincerity, and credibility are integral to its balancing of the best-interests considerations, and we give great deference to its custody award." *Bosquez*, 933 N.W.2d at 796.

A district court must consider the best interests of the child and make a custody award that serves those interests. Minn. Stat. § 518.17, subd. 1 (2022); *Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995). A child's best interests is the court's "paramount commitment." *Olson*, 534 N.W.2d at 549. In considering the child's best interests, a district court must consider "all relevant factors," including 12 factors prescribed by statute:

- (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development;

(2) any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;

(3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;

(4) whether domestic abuse, as defined in section 518B.01, has occurred in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs;

(5) any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs;

(6) the history and nature of each parent's participation in providing care for the child;

(7) the willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;

(8) the effect on the child's well-being and development of changes to home, school, and community;

(9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life;

(10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent;

(11) except in cases in which domestic abuse as described in clause (4) has occurred, the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and

(12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

Minn. Stat. § 518.17, subd. 1(a)(1)-(12)(2022).

A district court must make detailed findings on each of the statutory best-interests factors based on the evidence presented and explain how each factor led to its conclusions and to the determination of custody and parenting time. Minn. Stat. § 518.17, subd. 1(b)(1) (2022). In doing so, the district court “may not use one factor to the exclusion of all others, and the [district] court shall consider that the factors may be interrelated.” *Id*

Father argues that, in analyzing six of the statutory factors, the district court gave undue weight to the current living arrangements with father in Minnesota and mother in North Dakota. In its analysis of the best-interests factors, the district court determined that eight factors favored mother’s proposed custody and parenting time plan and four factors were neutral. Ultimately, the district court determined that it is in child’s best interests to award mother sole legal and sole physical custody. We will address each of those six factors in turn.

*First factor: child’s physical, emotional, cultural, spiritual, and other needs.*

Father argues that this factor should be neutral because the district court found that both parties can meet the needs of child. The district court found that, while father can meet child’s physical, emotional, and other needs during his parenting time, mother has been meeting all of child’s needs since moving to North Dakota in September 2020. As a



result, the district court determined that this factor favors “maintaining the current custody arrangement.”

*Second factor: special medical, mental health, or education needs of the child.*

Father argues that there was no evidence at trial to suggest one school was better than the other, and child has friends in both states. The record shows that child has special needs and requires an individualized educational plan (IEP). Child had an IEP in Minnesota and continues to have one in North Dakota. The district court heard testimony from mother that she meets regularly with the IEP team and that child is doing well. Child’s reading and writing skills have improved from 40% accuracy to 93%, and she no longer needs a math IEP. Child has also been excelling in her social skills and has started counseling. The district court ultimately found that child has been thriving academically and socially in North Dakota. It also found that continued counseling would be in child’s best interests. As a result, it determined that this factor favors maintaining the current custody and parenting time schedule. The record supports the district court’s analysis of this factor.

*Sixth factor: history and nature of each parent’s participation in providing care for the child.*

Father contends that both parties have a history of providing care and being involved in child’s life. Based on the record, the district court agreed as well. The district court considered father’s history of providing care for child and noted that before the parties’ separation, father was with child often and would help child with her homework. It also considered father’s testimony that mother did most of the cooking and handled school

issues. Mother testified that she provided for child's daily routine and basic needs. "While both parties have a history of being involved in providing care for the minor child, the [district] court [found] that [mother] has consistently taken on more of the primary care duties for [] child." It therefore determined that this factor favored mother. The district court's determination is supported by the record.

*Eighth factor: effect on the child's well-being and development of changes to home, school, and community.*

Father argues that this factor only favors mother because child lives in North Dakota. Mother testified that, over the past year and a half, child has settled into her new community and school in North Dakota. Child's academic performance has improved significantly through her IEP plan, and she has started therapy. She has also made new friends and sees them regularly. Finally, child has strong connections with her extended family who live nearby. The district court found that mother's proposed custody arrangement and parenting-time schedule minimizes changes to child's school and community and helps child maintain a routine. The record strongly supports the district court's determination that this factor favors child residing with mother during the school year.

*Ninth factor: effect on ongoing relationships between child and each parent, siblings, and other significant persons in child's life.*

Father argues that this factor should be neutral but does not identify any error of law or clear error in a factual finding committed by the district court and instead notes that child has significant connections to both parents and extended family on both sides. At trial, father testified that child is close to his side of the family and that child's paternal

grandmother used to care for child. Child also has half-siblings that reside in Minnesota and father testified that child could see them more often if she resided primarily with him. Mother testified that child has strong connections with her half-brothers and one of the brothers still resides with mother. Child also gets to see her maternal grandparents often and they live nearby to provide support. The district found that, under the current custody and parenting-time schedule, child has been able to maintain contact with both sides of her extended family and continues to live with her half-sibling. As a result, the district court determined that this factor favors mother. The record supports the district court's analysis of this factor.

*Tenth factor: benefit to child in maximizing parenting time with both parents and the detriment to child in limiting parenting time with either parent.*

Father argues that this factor should be neutral but does not identify any legal or factual error committed by the district court. For this factor, the district court recognized that the geographical distance between the parties made an alternating weekday parenting-time schedule during the school year impractical. The district court therefore found that, based on these unique circumstances, the current schedule effectively maximizes both parties' parenting time with child. The record supports the district court's analysis of this factor.

*Twelfth factor: willingness and ability of parents to cooperate in the rearing of their child.*

Father argues that the district court abused its discretion by determining that this factor favored mother. The district court heard testimony from mother that, based on the parties' relationship history, she was not comfortable speaking with father directly to make

joint decisions. But she expressed a willingness to use Our Family Wizard to communicate about child. Father acknowledged that the parties had not talked for some time because of the DANCO in place but testified to his willingness to communicate with mother, including using Our Family Wizard. He also believed that the parties could effectively communicate and make co-parenting decisions. The district court ultimately found that it is “highly unlikely” that the parties could effectively cooperate in caring for child, let alone resolve disputes over important decisions about child. Its determination that this factor favors mother is supported by the record.

In sum, given the ample evidence that supports the district court’s custody-award determination, we conclude that the district court did not abuse its discretion by awarding mother sole legal custody and sole physical custody of child.

**III. The district court maximized the parenting-time schedule for both parents and did not abuse its discretion.**

Father argues that the district court abused its discretion by awarding him only 32% parenting time and not maximizing child’s parenting time with father. We are not persuaded.

“The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of discretion.” *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017); *Olson* 534 N.W.2d at 550. “Reversible abuses of discretion include misapplying the law or relying on findings of fact that are not supported by the record.” *Shearer*, 891 N.W.2d at 75.

Here, the district court maximized father's parenting-time schedule with child. As mentioned above, for the school year, the district court awarded father parenting time with child every other weekend. It also ordered father's summer parenting time to continue which allows father even more time with child over the summer. Finally, for holiday breaks, the district court awarded father sole parenting time for both spring break and fall break. It also split the holidays evenly between the parties and ensured that father had Father's Day with child. The district court considered the geographical distance and maximized father's parenting time as much as the schedule allowed. We discern no abuse of discretion by the district court.

**Affirmed.**